

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TIMOTHY SMITH,

Plaintiff,

v.

3:17-CV-0286
(GTS/DEP)

JOHN TKACH, DSS Case Manager; TICIA EAVES,
Berkshire Case Manager; BROOME CTY. DEP'T OF
SOC. SERVS.; TRACI ZIEGENHAGEN; KATRINA
TOKOS; JULIA HEPWORTH; JESSICA LAYMAN;
SUSAN PATTERSON; MARISSA CARTER;
KATHLEEN SANTONI; JOHN CHOYNOWSKI;
JON PETERSON; and BERKSHIRE FARM CTR.,

Defendants.

APPEARANCES:

TIMOTHY SMITH

Plaintiff, *Pro Se*

6 Main Street, Apt. 2A
Johnson, New York 13790

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this *pro se* civil rights action filed by Timothy Smith (“Plaintiff”) against the Broome County Department of Social Services (“DSS”), Berkshire Farm Center (“Berkshire”), and eleven individuals employed by DSS or Berkshire (hereinafter collectively known as “Defendants”), is United States Magistrate Judge David E. Peebles’ Report-Recommendation recommending that Plaintiff’s claims asserted against DSS and his Fifth Amendment claim be dismissed but that all of Plaintiff’s other claims (arising under the Fourth and Fourteenth Amendments) remain pending. (Dkt. No. 6.) Plaintiff has not filed an

objection to the Report-Recommendation, and the deadline by which to do so has expired. (*See generally* Docket Sheet.) After carefully reviewing the relevant papers herein, including Magistrate Judge Peebles’ thorough Report-Recommendation, the Court can find no clear-error in the Report-Recommendation.¹ Magistrate Judge Peebles employed the proper standards, accurately recited the facts, and reasonably applied the law to those facts. As a result, the Report-Recommendation is accepted and adopted in its entirety for the reasons set forth therein.

ACCORDINGLY, it is

ORDERED that Magistrate Judge Peebles’ Report-Recommendation (Dkt. No. 7) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

ORDERED that all claims asserted against Broome County Defendant Department of Social Services (“DSS”) are **DISMISSED**, and the Clerk of Court shall terminate DSS from this action; and it is further

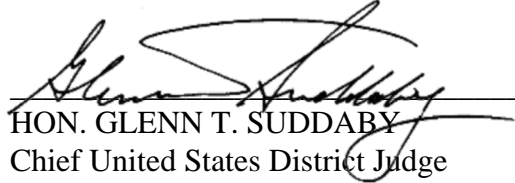
ORDERED that Plaintiff’s Fifth Amendment claim asserted against all Defendants is **DISMISSED**; and it is further

ORDERED that Plaintiff’s Fourth and Fourteenth Amendment claims survive the Court’s *sua sponte* review of Plaintiff’s Amended Complaint, and the Clerk of Court shall issue Summonses and forward them, along with copies of the Amended Complaint, to the U.S.

¹ When no objection is made to a report-recommendation, the Court subjects that report-recommendation to only a clear error review. Fed. R. Civ. P. 72(b), Advisory Committee Notes: 1983 Addition. When performing such a “clear error” review, “the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Id.*; *see also Batista v. Walker*, 94-CV-2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, J.) (“I am permitted to adopt those sections of [a magistrate judge’s] report to which no specific objection is made, so long as those sections are not facially erroneous.”) (internal quotation marks omitted).

Marshal for service upon Defendants John Tkach, Ticia Eaves, Traci Ziegenhagen, Katrina Tokos, Julia Hepworth, Jessica Layman, Susan Patterson, Marissa Carter, Kathleen Santoni, John Choynowski, Jon Peterson, and Berkshire Farm Center, who are directed to respond in accordance with the Federal Rules of Civil Procedure.

Dated: August 30, 2017
Syracuse, New York



HON. GLENN T. SUDDABY
Chief United States District Judge